



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2018-0322]

RIN 1625-AA00

Safety Zone, Delaware River; Diving and Survey Operations; Marcus Hook, PA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a safety zone encompassing all navigable waters within a 250-yard radius of the Commerce Construction vessels and associated equipment conducting survey and diving operations in the Delaware River, and in the vicinity of Anchorage 7, near Marcus Hook, PA. The safety zone is needed to protect personnel, vessels, associated equipment, and the marine environment from potential hazards created by survey and diving operations. Entry of persons or vessels into this safety zone will be prohibited unless specifically authorized by the Captain of the Port Delaware Bay. We invite your comments on this rule.

DATES: This rule is effective from April 30, 2018 through June 30, 2018. Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2018-0322 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the

“Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this rulemaking, call or email Petty Officer Edmund Ofalt, Waterways Management Branch, U.S. Coast Guard Sector Delaware Bay; telephone (215) 271–4814, e-mail Edmund.J.Ofalt@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

APA	Administrative Procedure Act
CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule due to the short time period between when Sector Delaware Bay received complete details of this operation, March 28, 2018, and the date when this safety zone needs to go into effect by. It is impracticable and contrary to the public interest to publish an NPRM before issuing this rule because we must establish the safety zone by

April 30, 2018, to ensure the safety of personnel, vessels, associated equipment, and the marine environment from potential hazards created by survey and diving operations. The Coast Guard is providing an opportunity to comment prior to the rule becoming effective and while the rule is in effect and may amend the rule after it is effective if necessary.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to mitigate hazards presented by survey and diving operations.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Delaware Bay (COTP) has determined that a safety zone is necessary to mitigate the hazards involving survey and diving operations. The safety zone covers all navigable waters within 250-yards of vessels and associated equipment being used by personnel to conduct survey and diving operations.

IV. Discussion of the Rule

This rule establishes a safety zone from April 30, 2018, through June 30, 2018. The safety zone will cover all navigable waters within 250-yards of survey and diving operation vessels, as well as any associated equipment, operating in Marcus Hook Anchorage No. 7 near Marcus Hook, PA, and within the Marcus Hook Range on the Delaware River. Diving and survey operations conducted within the anchorage will be in the southernmost portion of the anchorage on the eastern side adjacent to the New Jersey shoreline. The affiliated safety zone will restrict available anchorage grounds in the

lower portion of Anchorage No. 7. During diving and survey operations conducted within navigable channel of the Marcus Hook Range, vessels will not be permitted to anchor within the southern portion of the anchorage as this section will be utilized to allow traffic to safely pass around the safety zone. Information on procedures for requesting permission to anchor, as well as any changes to traffic patterns, will be distributed to the maritime community via the methods stated below.

Notification regarding the specific location of the zone and any changes to traffic patterns will be sent to the maritime community via Broadcast Notice to Mariners and Marine Safety information Bulletins. Marine Safety Information Bulletins may be obtained from <https://homeport.uscg.mil/port-directory/delaware-bay> or by calling the Coast Guard Delaware Bay Command Center at 215-271-4807.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on size, location and duration of the safety zone. The safety zone will impact a small designated area of Marcus Hook Anchorage No. 7 and the Marcus Hook Range on the Delaware River. During enforcement periods of the safety zone these impacts include restrictions to the location, type and size of vessels that may anchor in the Marcus Hook Anchorage. However, other anchorages in the Delaware River will remain fully operational as alternatives for vessel traffic. Vessel traffic will be able to safely transit around the safety zone. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16, Local Notice to Mariners, and Marine Safety Information Bulletin about the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies

and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this

rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone that will prohibit entry within 250-yards of survey and diving operation vessels, as well as any associated equipment, operating in Marcus Hook Anchorage No. 7 and Marcus Hook Range, on the Delaware River. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from

this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. The Coast Guard may amend this temporary final rule if we receive comments from the public that indicate that a change is warranted. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this temporary final rule as being available in the docket, and all public comments, will be in our online docket at

<http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05-0322 to read as follows:

§ 165.T05-0322 Safety Zone, Delaware River; Diving and Survey Operations; Marcus Hook, PA.

(a) Location. The following areas are safety zones: all navigable waters within 250-yards of Commerce Construction crane barge KELLY and the towing vessel JOKER, as well as any associated equipment, operating in Marcus Hook Anchorage No. 7 or Marcus Hook Range, on the Delaware River.

(b) Definitions. (1) *Captain of the Port* means the Commander, Sector Delaware Bay or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Designated representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Delaware Bay, to assist with the enforcement of safety zones described in paragraph (a) of this section.

(c) Regulations. The general safety zone regulations found in subpart C of this part apply to the safety zones created by this section.

(1) Entry into or transiting within the zones is prohibited unless vessels obtain permission from the Captain of the Port via VHF-FM channel 16 or make satisfactory passing arrangements via VHF-FM channels 13 or 16 with the crane barge KELLY or towing vessel JOKER.

(2) Any vessel wishing to anchor within Marcus Hook Anchorage No. 7 is required to verify compliance with current temporary restrictions and requirements noted within the most current Sector Delaware Bay Marine Safety Information Bulletin. The most current Marine Safety Information Bulletin may be obtained at <https://homeport.uscg.mil/port-directory/delaware-bay> or by calling the Coast Guard Delaware Bay Command Center at 215-271-4807.

(3) All vessels authorized to enter or transit the zones must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

(4) This section applies to all vessels except those engaged in law enforcement, aids to navigation servicing, and emergency response operations.

(d) Enforcement periods. This section will be enforced from April 30, 2018, through June 30, 2018.

Dated: April 12, 2018.

Scott E. Anderson,
Captain, U.S. Coast Guard,
Captain of the Port Delaware Bay.

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